

U.S. DISTRICT COURT
W. DIST. OF N.C.

RULE 11 INQUIRY AND ORDER OF ACCEPTANCE OF UNWRITTEN PLEA

Case 1:16-cr-00046-MR-DLH Document 17 Filed 08/22/16 Page 1 of 11

YES: X

NO:

5. Recognizing your right to proceed before a district judge, do you expressly consent to proceed in this court, that is, before a United States Magistrate Judge?

YES: X

NO:

6. a) There has been presented to me a document entitled "Sealed Addendum to Entry and Acceptance of Guilty Plea" which provides information to me concerning your name, age, education, use of drugs or alcohol and medical information. Did you provide the information for the completion of that document and did you sign that document?

YES: X

NO:

- b) Is all the information provided in the document true and accurate?

YES: X

NO:

7. Is your mind clear and do you understand that you are here today to enter a guilty plea that may not later be withdrawn?

YES: X

NO:

8. Do you understand that you have the right to be represented by an attorney at every stage of this proceeding?

YES: X

NO:

Have you reviewed the bill of indictment with your attorney?

YES: X

NO:

9. Are you pleading guilty to counts one and two as contained in the bill of indictment?

YES: X

NO:

The law requires that I advise you of the essential elements of such an offense. Before I advise you of those elements, I am going to read to you the statute it is alleged that you have violated:

Count One:

18 USC § 922(g)(2)

It shall be unlawful for any person who is a fugitive from justice ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The Elements of the Offense are as Follows:

1. That at the time alleged in the bill of indictment you were a "fugitive from justice" in that you were a person who had fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding;
2. That thereafter you possessed, shipped, transported or received any firearm or ammunition;
3. That the firearm or ammunition had been shipped or transported in interstate or foreign commerce;
4. That you did such acts knowingly, intentionally, willfully and unlawfully.

Penalty:

I am also required by law to advise you concerning the maximum and minimum penalties prescribed by law for such an offense or offense(s). Those maximum and minimum penalties are as follows:

The maximum possible penalty for this offense is a term of imprisonment of not more than 10 years', a fine not to exceed the sum of \$250,000, or both, and a term of supervised release of not more than 3 years' and a \$100 special assessment.

However, if at the time of the commission of this offense, you had three previous convictions by any court for a violent felony or a serious drug offense, or both, committed on occasions different from one another, then

you would be subject to being imprisoned for a term of imprisonment of not less than 15 years' nor more than life, a fine not to exceed the sum of \$250,000., or both, a term of supervised release of not more than 5 years' and a \$100 special assessment. Notwithstanding any other provision of the law, the court shall not suspend the sentence of or grant a probationary sentence to such person.

Count Two:

18 USC § 922(g)(3)

It shall be unlawful for any person who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the controlled Substances Act [21 USC 8021]) to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The Elements of the Offense are as Follows:

1. That at the time and place described in the bill of indictment, you were an unlawful user of or addicted to a controlled substance;
2. That at the time and place described in the bill of indictment you shipped, transported, possessed or received any firearm or ammunition [as defined in 18 U.S.C. § 921(a)(3) and/or (4)];
3. That the firearm or ammunition had been shipped or transported in interstate or foreign commerce;
4. That you did such acts knowingly, intentionally, willfully and unlawfully.

Penalty:

I am also required by law to advise you concerning the maximum and minimum penalties prescribed by law for such an offense or offense(s).

The maximum possible penalties for this offense is a term of imprisonment of not more than 10 years', a fine not to exceed the sum of \$250,000, or both, and a term of supervised release of not more than 3

years' and a \$100 special assessment.

However, if at the time of the commission of the offense, you had three previous convictions by any court for a violent felony or a serious drug offense, or both, committed on occasions different from one another, then you would be subject to being imprisoned for a term of imprisonment of not less than 15 years' nor more than life, a fine not to exceed the sum of \$250,000., or both, a term of supervised release of not more than 5 years' and a \$100 special assessment. Notwithstanding any other provision of the law, the court shall not suspend the sentence of or grant a probationary sentence to such person.

10. Do you understand that if you are not a citizen of the United States, your guilty plea may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under Federal Law?

YES: X

NO:

11. a) Do you fully understand the charges against you, including the maximum and minimum penalties?

YES: X

NO:

- b) Do you understand each element of the offenses charged?

YES: X

NO:

- c) Do you understand that upon a plea of not guilty the government would be required to prove each element of the offenses charged beyond a reasonable doubt?

YES: X

NO:

- d) Do you understand that the government would be required to prove that the unlawful act(s) were committed knowingly, wilfully, intentionally, and unlawfully?

YES: X

NO:

12. If the court imposes an active term of imprisonment of more than one year, the court is required also to order a term of "supervised release," and a term of supervised release may be ordered in other circumstances. This means that after a defendant is released from prison, there are certain terms and conditions they will be required to follow. The length of supervised release usually ranges from one to five years, but may be more or less than that for certain offenses. Do you understand the terms "supervised release" as the court has explained it to you?

YES: X

NO:

13. Do you understand that if you violate the terms and conditions of supervised release, you could be returned to prison for an additional period of time?

YES: X

NO:

14. Do you understand that parole has been abolished in the federal system; and if you are sentenced to a term of imprisonment, you will not be released on parole?

YES: X

NO:

15. Have you and your attorney discussed how the United States Sentencing Guidelines may apply in your case?

YES: X

NO:

16. Do you understand how these Guidelines may apply to you?

YES: X

NO:

17. Do you understand that the Court is not bound by the Sentencing Guidelines but nevertheless must consult the Guidelines and take them into account when sentencing?

YES: X

NO:

18. Do you understand that the sentence the Court will impose will be within within the statutory limits and in the Court's sound discretion and could

could be greater or less than the sentence as provided by the Guidelines?

YES: X

NO:

19. Do you understand that the Court will follow the procedural components of the Guidelines system, which means that the Probation Office will prepare a presentence report which contains Guidelines calculations and both you and the Government will have an opportunity to object to any alleged deficiencies in the report?

YES: X

NO:

20. Do you understand that in some circumstances you may receive a sentence that is different - that is, either higher or lower - than that called for by the Guidelines?

YES: X

NO:

21. Do you understand that if the sentence is more severe than you expect, you will still be bound by your plea and have no right to withdraw the plea of guilty?

YES: X

NO:

22. Do you understand that the court has the discretion, in appropriate circumstances, to order you to make restitution to any victim of the offense. The court may also, in the appropriate circumstance, require you to pay the costs of your confinement in prison or costs of supervision or special investigative costs, or all of these costs. The court may also require you to forfeit property involved in the offenses. Do you understand these requirements as I have explained them to you?

YES: X

NO:

23. Do you understand you have a right to plead not guilty, to have a speedy trial before a judge and jury, to summons witnesses to testify in your behalf, and to confront witnesses against you?

YES: X

NO:

24. Do you understand that if you exercise your right to trial you would be entitled to the assistance of an attorney, that you would not be required to testify, that you would be presumed innocent, and the burden would be on the Government to prove your guilt beyond a reasonable doubt. Do you understand all of these rights?

YES: X

NO:

25. Do you understand that by entering a plea of guilty, you forfeit and waive (or give up) your right to plead not guilty, to a trial by jury, and at that trial the right to assistance of counsel, the right to confront and cross-examine witnesses against you, and the right against compelled self-incrimination or any other rights associated with a jury trial? Do you understand that by entering this plea of guilty you are waiving (or giving up) all of these rights. A trial will not be held. If your plea of guilty is accepted, there will be one more hearing where the district court will determine what sentence to impose.

Do you understand all these things?

YES: X

NO:

26. Are you, in fact, guilty of the counts in the bill of indictment to which you have come to court today to plead guilty? That is, did you commit the act described in counts one and two of the bill of indictment?

YES: X

NO:

27. a) Is your plea of guilty voluntary?

YES: X

NO:

- b) Has anyone made any promise to you or threatened you in any way to cause you to enter this plea of guilty against your wishes?

YES:

NO: X

- c) Do you enter this plea of guilty of your own free will, fully understanding what you are doing?

YES: X

NO:

28. Do you understand that entering a plea of guilty to a felony charge may deprive you, at least for a time, of certain civil rights such as the right to vote, hold a public office, serve on a jury and possess a firearm?

YES: X

NO:

29. Is your willingness to plead guilty the result of prior discussions between your attorney and the attorney for the government?

YES:

NO: X

30. Have the government and defendant entered a plea agreement of any kind or nature in this case?

YES:

NO: X

31. Have you had ample time to discuss with your attorney any possible defenses you may have to this charge; and have you told your attorney everything you want such attorney to know about this case?

YES: X

NO:

32. Are you entirely satisfied with the services of your attorney?

YES: X

NO:

33. Are you telling the court that you know and understand fully what you are doing; that you heard and understood all parts of this proceeding; and want the court to accept your plea of guilty?

YES: X

NO:

34. Do you have questions, statements, or comments to make about anything brought up or discussed in the course of the proceeding? If you do, I will be happy to try and answer your questions or I will be glad to hear any statements or comments that you want to make.

YES:

NO: X

On advice and in the presence of counsel, the defendant respectfully requests the Magistrate Judge to accept his or her guilty plea. By signing below, the defendant (and counsel) certify and affirm that the answers given to the questions propounded by the court, as recorded above and on the record, are true and accurate to the best of their knowledge.

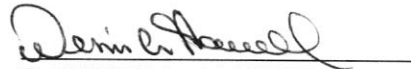

Defendant's Signature


Counsel's Signature

Based upon the representations and answers given by the defendant (and (and counsel) in the foregoing Rule 11 proceeding, the court finds that the defendant's plea is knowingly and voluntarily made; and that the defendant understands the charges, potential penalties, and consequences of said plea. The court further finds that defendant's plea is supported by an independent independent basis in fact containing each of the elements of the offense charged against the defendant in counts one and two of the bill of indictment. indictment. Based thereon the defendant's plea is hereby accepted. In addition, I recommend that the district court accept the defendant's plea and enter judgment thereon. If you have any objection to my recommendation, you have 14 days to file any such objections in writing with this court. If you

you fail to object within that 14 day period it will be deemed a waiver of any such objection.

SO ORDERED, this the 22nd day of August 2016.

A handwritten signature in black ink, appearing to read "Dennis L. Howell", is written over a horizontal line.

DENNIS L. HOWELL
UNITED STATES MAGISTRATE JUDGE